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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** September 10, 2009

**IBA Report Number:** 09-72

**City Council Docket Date:** September 15, 2009

**Item Number:** # 331

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# SEC Response to the Second Annual Report of Independent Consultant to the City

## OVERVIEW

The City's Independent Consultant (Stan Keller) issued his Second Annual Report to the City (Report) on April 24, 2009 in accordance with the Cease-And-Desist Order of the United States Securities and Exchange Commission (SEC) dated November 14, 2006. Mr. Keller presented his Report to the Audit Committee and the City Council on July 20, 2009. The City Council directed the IBA to review the initial draft response of the Mayor to the SEC. The IBA was asked to provide input on behalf of the City Council with the goal of developing a unified response to the SEC from the Mayor and City Council. The IBA was further directed to report any concerns related to the draft unified response to the SEC docketed for City Council consideration in September 2009. This report provides 1) IBA comments on the initial CFO draft of the unified response (attached) and 2) subsequent comments on the final draft that has been docketed for City Council consideration on September 15th.

## FISCAL/POLICY DISCUSSION

### Comments on the Initial Draft Response to the SEC

The IBA reviewed the CFO's initial draft response to the SEC and provided comments to the COO and CFO on August 13, 2009. In reviewing the initial draft, the IBA felt that the CFO had adequately responded to most of the Independent Consultant's recommendations; however, revisions/modifications were suggested for certain draft responses. The IBA's recommended changes are shown in a strikeout/underline format in the attached draft from August 13<sup>th</sup>.

After discussing our comments with the COO and CFO, a subsequent iteration of the draft SEC response, incorporating most of our comments, was distributed by the CFO. In preparing the modified draft response, the CFO additionally received and utilized information from the City Attorney's Office, SDCERS, and the City Auditor.

#### IBA Comments on the Docketed Draft Response to the SEC

The IBA has reviewed the docketed draft response to the SEC. We find all responses to be appropriate for a unified response with the exception of the responses to recommendations #11 (on page 6) and #17 (on pages 10 and 11). Recommendation #11 provides: *"The Audit Committee and DPWG should consider a process that allows designated members of the Audit Committee, on an ad hoc basis, to have input on the CAFR before it is publicly released."* In a related manner, recommendation #17 provides: *"The DPWG should consider ways to enhance the confidence of Audit Committee members and Council Members in the DPWG process in compliance with the Brown Act and without diminishing the effectiveness of the DPWG."*

There were two significant changes from the CFO's initial draft response to the draft response that is currently before the City Council. The first change limited Audit Committee participation to Committee members who possess "professional experience in accounting, auditing or financial reporting" and the second change removed City Council involvement from the response to recommendation #17. These changes conflict with 1) Mr. Keller's comments to the City Council on July 20<sup>th</sup> and 2) objectives expressed by Councilmembers Frye and Faulconer on July 20<sup>th</sup> regarding the ability of a designated Audit Committee or City Council member to participate in the DPWG's final review of the CAFR before an audit opinion is issued and the CAFR is publicly released.

On August 31<sup>st</sup>, the Audit Committee reviewed a draft ordinance to amend the Audit Committee Charter for inclusion into the City's Municipal Code. The matter of Audit Committee member participation in DPWG to review the CAFR prior to public release was discussed. Following the discussion, the Audit Committee requested the City Attorney to amend the draft ordinance to remove the professional experience and certification requirements for limited Committee participation in DPWG's CAFR review process. The City Attorney has amended the draft ordinance to incorporate these and other changes. The amended draft ordinance is docketed for further Audit Committee discussion at their September 14<sup>th</sup> meeting.

#### Question related to SDCERS obligation to report to the DPWG or City Council

On July 20<sup>th</sup>, Councilmember Frye asked the City Attorney's Office if SDCERS officials could be compelled to report to the DPWG or the City Council. In the draft response to recommendation #18, the City Attorney has noted the applicable Municipal Code Section (22.4110) requiring officers and employees of SDCERS to assist DPWG as requested, including appearing before the DPWG. The City Attorney's DPWG Coordinator has informed the IBA that SDCERS officials have been responsive to all requests from the DPWG to date. The City Attorney can best respond to additional questions as to whether this Municipal Code Section extends to City Council requests of SDCERS or if there are legal consequences for failing to comply with the Municipal Code.

## CONCLUSION

**The IBA recommends that the responses to recommendations #11 and #17 be amended to allow for limited Audit Committee and City Council participation, or representation, in DPWG meetings to discuss the CAFR prior to public release.** This would be in keeping with the Independent Consultant's recommendation, the stated objectives of Councilmembers Frye and Faulconer, and concerns expressed by the Audit Committee. Alternatively, the City Attorney or the Mayor may be able to suggest other acceptable methods for enhancing the confidence of Audit Committee or City Council members. If so, these methods should be identified in the response to recommendations #11 and #17.

**If the response to recommendations #11 and #17 are amended to specifically address the Independent Consultant's recommendation to the satisfaction of the City Council, the IBA recommends that a unified response be sent to the SEC on behalf of the Mayor and City Council.** When asked, the Independent Consultant suggested that a unified response would convey a more positive message to the SEC. If, however, the City Council prefers to issue a separate response, the IBA can prepare City Council correspondence to the SEC expressing different perspectives to some of the responses drafted by the CFO on behalf of the Mayor.

**[SIGNED]**

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Attachment

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APPROVED: Andrea Tevlin  
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